IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO Nos. 456, 457, 458, 459, 460 and 461 of 2003.

Judgement reserved on: 22.5.2007.

Date of decision: 25.06.2007 .

(For title, please see pages (i) & (ii))

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

***Whether approved for reporting?*[1]**

For the Appellants :

(see overleaf).

For the Respondents :

Kuldip Singh, Judge.

This judgement shall dispose of FAO Nos. 456, 457, 458, 459, 460 and 461 of 2003. All these appeals have arisen out of common order dated 9.7.2003 passed by Commissioner, under Workmen's Compensation Act, Jhakri in FA Nos. 3 of 2001, NFA No. 29 of 2001, FA No. 6 of 2001, NFA No. 28 of 2001, FA No. 4 of 2001 and FA No. 5 of 2001, respectively. The further facts are that FA Nos. 3 of 2001, 4 of 2001, 5 of 2001, 6 of 2001, and NFA No. 28 of 2001 and NFA No. 29 of 2001 were filed by the petitioners claiming

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

compensation under the Workmen's Compensation Act, 1923 (for short, the Act). In FA Nos. 3 of 2001, 4 of 2001, 5 of 2001 and 6 of 2001, compensation was claimed by the dependants of the deceased workmen, whereas in NFA Nos. 28 of 2001 and NFA No. 29 of 2001, the claim petitions were filed by the injured workmen. The Commissioner, vide common order dated 9.7.2001, in FA Nos. 3 of 2001, 4 of 2001, 5 of 2001, 6 of 2001, NFA No. 28 of 2001 and NFA No. 29 of 2001, allowed following compensation and interest:-

Sr. No.	**Case No.**	**Compensation awarded**	**Simple interest w.e.f. 1.5.2001 to the date of deposit @ 12% per annum.**	**Total amount**
1.	FA No. 3 of 2001.	Rs.3,36,245/-	Rs. 91671/-	Rs.4,27,916/-
2.	FA No.4 of 2001.	Rs.2,70,264/-	Rs.73682/-	Rs.3,43,964/-
3.	FA No. 5 of 2001.	Rs.3,74,682/-	Rs.1,02,150/-	Rs.4,76,832/-
4.	FA No. 6 of 2001	Rs.3,55,425/-	Rs.96900/-	Rs.4,52,325/-
5.	NFA No.28 of 2001	Rs.1,86,854	Rs.50942/-	Rs.2,37,796/-
6.	NFA No.29 of 2001	Rs.24449/-	Rs.6666/-	Rs.31,115/-

The Commissioner held New India Assurance Company to pay the entire compensation alongwith interest to the claimants with a direction to the Assurance Company to deposit whole of the compensation amount Rs. 19,69,930/- before the Commissioner within one month from the receipt of the order. The New India

Assurance Company has filed separate appeals being FAO Nos. 464, 465, 466, 467, 468 and 469 of 2003, against the common award dated 9.7.2003. Those appeals are being disposed of by separate judgement.

2. The Commissioner issued notice to employer on 9.7.2001 in all the above cases being FA Nos. 3 of 2001, NFA No. 29 of 2001, FA No. 6 of 2001, NFA No. 28 of 2001, FA No. 4 of 2001 and FA No. 5 of 2001, respectively, as to why penalty under Section 4-A (3)(b) of the Act be not imposed for violating statutory provision for not settling the claim within stipulated period. The employer filed reply to the show cause notice and has submitted that the employer had denied the liability under the Act from the very beginning which was based upon law and there was justification for the denial. The claimants were informed their right to move the court for claiming compensation. The Assurance Company was intimated in time and this fact was mentioned in the replies filed to the main petition. The employer was never negligent in dealing with the matter. The required information was promptly given. There was no delay on the part of the employer for finalizing the cases. As per the employer, there was no liability of the employer, thus there was no question of settlement and depositing of compensation. On these grounds, employer justified non-payment/deposit, settlement of compensation.

3. The Commissioner, vide common order dated 6.8.2003, has imposed 50% penalty on compensation amount on the employer, under Section 4-A (3) (b) of the Act, as follows:-

Sl.No.	Case No. & Particulars	Compensation	Penalty @ 50%
1.	F.A.No.3 of 2001 deceased Gian Chand, Driver.	Rs.3,36,245/-	Rs. 1,68,123/-
2.	F.A.No. 4 of 2001 deceased Anil Tyagi, Helper	Rs.2,70,264/-	Rs.1,35,132/-
3.	F.A.No. 5 of 2001 deceased Karam Chand, Driver.	Rs.3,74,682/-	Rs.1,87,341/-
4.	F.A.No. 6 of 2001 deceased Yashpal Singh, Driver.	Rs.3,55,425/-	Rs.1,77,717/-
5.	N.F.A. No. 28 of 2001 workman Ashok Kumar, Mechanic	Rs. 1,86,854/-	Rs. 93,427/-
6.	N.F.A. No. 29 of 2001 workman Ashok Kumar, Helper.	Rs.24,449/-	Rs.12.225/-
		Total:	Rs.7,73,961

The employer was further directed to deposit Rs. 7,73,961/- penalty before the Commissioner within one month from the date of the receipt of the order, failing which 12% simple interest shall be charged over the amount due.

4. The employer has assailed the common order, dated 6.8.2003, imposing penalty and interest by way of above appeals. The employer has not filed appeal against the order dated 9.7.2003, in FA Nos. 3 of 2001, 4 of 2001, 5 of 2001, 6 of 2001, NFA No. 28 of 2001 and NFA No. 29 of 2001, which order has attained finality.

5. The above appeals were admitted on following substantial questions of law:-

1. Whether the impugned order awarding the amount of compensation by way of penalty payable to the

claimants by the employer when the liability under the Workmen's Compensation Act was not accepted from the very beginning is against the provisions of Workmen's Compensation Act and is not sustainable in the eyes of law?

2. Whether impugned order awarding compensation by way of penalty to the claimants under the Workmen's Compensation Act to the extent of full 50% is without any justification and the finding this fact recorded without any material, is justified?

3. Whether Ld. Commissioner after deciding the claim petition filed by the claimants vide order dated 9.7.2003 had become functus officio and was not entitled under law to make an order subsequently as regards award of penalty amount after the determination of compensation and the impugned order is without lawful authority and jurisdiction?

6. I have heard the learned counsel for the parties and have also gone through the record.

7. The learned counsel for the employer- appellant has submitted that as per employer the liability to pay the compensation was of the Insurance Company, which in fact has been ordered to deposit the compensation, as per order, dated 9.7.2003. The employer had justified reasons not to pay, deposit the compensation as claimed by the claimants. Therefore, the employer is not liable to pay any penalty. In any case, the penalty imposed is excessive. The Commissioner, after having passed the order, dated 9.7.2003,

became functus officio and has no jurisdiction to impose penalty. Therefore, the impugned order is liable to be set aside. On the other hand, the learned counsel representing the claimants and the insurance company supported the impugned order.

Substantial Question No. 3.

8. The learned counsel for the appellant- employer has submitted that the Commissioner has decided the claim petitions by a common order, dated 9.7.2003, and once he has decided the claim petitions, he had no jurisdiction to take up the matter again and impose penalty. As per Section 4-A of the Act, if the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be without prejudice to the right of the workman to make any further claim. The sub-section (3) of Section 4-A of the Act, prescribes that in case employer fails to pay the compensation due within one month from the date it fell due, the Commissioner shall direct the employer in addition to the amount of the arrears to pay simple interest at the rate of 12% and in case there is no justification for the delay, direct the employer to pay penalty not exceeding 50% in addition to the amount of compensation and interest. However, before imposing penalty reasonable opportunity to the employer to show cause is to be given.

9. In the present case, on 9.7.2003, the Commissioner came to the conclusion that the claimants are entitled to

compensation but in view of insurance, the Commissioner directed the insurer to pay the compensation amount. Before 9.7.2003, there was no finding of Commissioner regarding the payment of the compensation to the claimants.

10. The Act, however, makes it obligatory on the employer to pay the compensation when it fell due. The compensation falls due as soon as the personal injury was caused to the workman as held by Supreme Court in **Partap Narain Singh Deo vs. Shrinivas Sabata and another** [1976 ACJ 141]. In **Saraswati Press Dehradun vs. Nand Ram** [1971 ACJ 316], it has been held that workman becomes entitled to the compensation as soon as it falls due that is to say on the date of injury and not on subsequent occasion. The non-payment of compensation by the employer is at his risk. The Commissioner on 9.7.2003, after having come to the conclusion that claimants are entitled to compensation, but they have not been paid the compensation, issued show cause notice to the employer for payment of compensation. This is otherwise the requirement of proviso to sub-section (3) of Section 4-A of the Act. It cannot be said that on having decided the claim petitions on 9.7.2003, the Commissioner had become functus officio. The imposition of penalty is in continuation of the earlier proceedings and for purposes of penalty, the proceedings were not over on 9.7.2003. Rather for purposes of penalty the proceedings started on 9.7.2003 when the Commissioner has come to the conclusion that the claimants are entitled to compensation.

The substantial question No. 3, is decided against the employer and in favour of the claimants.

Substantial Questions No. 1 and 2:

11. The substantial questions No. 1 and 2, are interconnected, therefore, these are being disposed of collectively.

12. The employer in reply to show cause notice has justified the non-payment of compensation by taking the defence that the employer right from the very beginning was denying the liability to pay the compensation, therefore, the employer was justified in not paying/ depositing the compensation, as claimed by the claimants. The employer has also taken the plea that the claimants were informed about their rights, the insurance company was also informed. The employer was not negligent in dealing with the matter.

13. The sub-section (2) of Section 4-A of the Act, gives the option to the employer to make provisional payment based on the extent of liability, which he accepts and such payment shall be deposited with the Commissioner or made to the workman without prejudice to the right of the workman to make any further claim. The purpose of this provision is to make provisional payment to the workman or his dependants by employer by way of immediate help to the extent employer admits the liability. The employer under this provision has no liberty to deny the liability as a whole and then take plea later on that since he had not accepted the liability, therefore, he was not liable to pay any provisional payment and consequently also not liable to pay penalty. The option given to the employer, under

sub-section (2) of Section 4-A of the Act, is subject to determination of compensation and non-payment of due amount to workman or his dependants by way of provisional amount by the employer will attract the payment of penalty, under sub-section 3(b).

14. The employer in the present case, except for taking the plea that claimants were not entitled to payment of compensation, has not taken any factual plea to show that there was some genuine difficulty for depositing/ payment of provisional compensation by the employer to the claimants. At the time of hearing, learned counsel for the employer has submitted that Commissioner has not given enough time to the employer for depositing the compensation. It has also been submitted that there was difficulty in arranging the funds, but the employer has not taken these pleas in its reply to show cause.

15. In **Samuben and others vs. Patel Industries and another** [1995 ACJ 75], it has been held in para-12 of the judgement, as follows:-

> "It cannot be gainsaid that the appellants lost their bread winner in the family. Their life would have been rendered full of miseries for want of regular income from the bread-winner who breaths his last on account of his meeting with the unfortunate accident in the course of his employment. Denial of timely payment of compensation would certainly add to their miseries. In that view of the matter, the maximum penalty amount under the Act deserves to be imposed on the respondents and awarded to the appellants. The maximum amount of penalty permissible under the Act is 50 per cent of the compensation amount. The respondents deserve to be

imposed with the penalty of Rs. 9,000/- for non payment of compensation in time."

16. In **United India Insurance Co. Ltd. vs. Nako alias Naiku Devi and others** [1996 ACJ 516], a Division of this Court in paras-14 and 15 of the judgement, has held as follows:-

"The compensation amount fell due on the date of accident, that is, 27.6.1984, but it was not paid/ deposited within one month. Therefore, claimants-respondents in both the appeals shall be entitled to simple interest at the rate of 6 per cent per annum on the amount of compensation."

"Regarding penalty, there is no finding of the Commissioner. We do not find from the record that there was any justification for not paying the amount within the above period. Therefore, the claimants in both the appeals shall be entitled to get penalty of 50 per cent on the amount of compensation awarded."

17. The employer has not shown justification for non payment/ depositing the compensation from the date it fell due nor even immediately after the decision dated 9.7.2003. Therefore, the Commissioner is justified in imposing 50% penalty on the compensation amount and further 12% interest on the penalty if it was not paid/ deposited within the time granted by the Commissioner.

18. The employer has failed to make out any case for interference. The substantial questions No. 1 and 2 are decided against the employer and in favour of the claimants.

19. The result of the above discussion is FAO Nos. 456, 457, 458, 459, 460 and 461 of 2003, are dismissed. Order dated 9.7.2003, is upheld in each appeal with costs quantified at Rs. 3000/- in each appeal to be paid by the employer- appellant to the claimants-respondents.

June 25, 2007. ***(Kuldip Singh)***
(Hem) ***Judge.***

(i)

1. **FAO No. 456 of 2003.**

M/s ANS Earthmovers ….Appellant.

vs.

Smt. Surto Devi & ors. …. Respondents.

For the appellant: Mr. Ashwani K. Sharma, Advocate.

For the respondents: Mr. Debender Ghosh, Advocate, for respondents No. 1 & 2.

Mr. K.D. Sood, Advocate, for respondent No.3.

2. **FAO No. 457 of 2003.**

M/s ANS Earthmovers ….Appellant.

vs.

Ashok Kumar & ors. …. Respondents.

For the appellant: Mr. Ashwani K. Sharma, Advocate.

For the respondents: Mr. Debender Ghosh, Advocate, for respondents No. 1.
Mr. K.D. Sood, Advocate, for respondent No.2.

3. **FAO No. 458 of 2003.**

M/s ANS Earthmovers ….Appellant.

vs.

Smt. Pammi Devi & ors. …. Respondents.

For the appellant: Mr. Ashwani K. Sharma, Advocate.

For the respondents: Mr. Debender Ghosh, Advocate, for respondents No. 1 to 4.

Mr. K.D. Sood, Advocate, for respondent No.5

4. **FAO No. 459 of 2003.**

M/s ANS Earthmovers ….Appellant.

vs.

Ashok Kumar & ors. …. Respondents.

(ii)

For the appellant: Mr. Ashwani K. Sharma, Advocate.

For the respondents: Mr. Debender Ghosh, Advocate, for respondent No. 1.

Mr. K.D. Sood, Advocate, for respondent No.2

5. **FAO No. 460 of 2003.**

M/s ANS Earthmovers ….Appellant.

vs.

Hoshiar Singh Tyagi & ors. …. Respondents.

For the appellant: Mr. Ashwani K. Sharma, Advocate.

For the respondents: Mr. Debender Ghosh, Advocate, for respondents No. 1 & 2.

Mr. K.D. Sood, Advocate, for respondent No.3.

6. **FAO No. 461 of 2003.**

M/s ANS Earthmovers ….Appellant.

vs.

Usha Devi & ors. …. Respondents.

For the appellant: Mr. Ashwani K. Sharma, Advocate.

For the respondents: Mr. Debender Ghosh, Advocate, for respondents No. 1 & 2.

Mr. K.D. Sood, Advocate, for respondent No.3

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